



## Personnel and Administrative Policy and Procedure

<b>SUBJECT: Public Records</b>	<b>EFFECTIVE DATE:</b> January 1, 2008 <b>REVIEWED:</b> May 2011 <b>REVISED:</b>
<b>CATEGORY: 600</b> <b>POLICY NUMBER: 600.2</b>	<b>CROSS REFERENCE:</b> Milwaukie Municipal Code Chapter 2.35 -- City Records (Ordinance 1786)  Resolution 72-2007 -- adopting reasonable measure to ensure integrity of City records  Annual fee resolution establishing charges for copying and staff time in fulfilling extensive records requests

**Purpose:** Establish a procedure that recognizes and respects the public's right to public documents and the importance of maintaining orderly files to facilitate public access in an efficient and cost-effective manner.

### **Definitions:**

**Public Body:** 192.410(3) "Public body" includes every state officer, agency, department, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council, or agency thereof; and any other public agency of this state.

**Public Record:** 192.410(4)(a) "Public record" includes any writing that contains information relating to the conduct of the public's business, including but not limited to court records, mortgages, and deed records, prepared, owned, used or retained by a public body regardless of physical form or characteristics.<sup>1</sup>

192.410(4)(b) "Public record" does not include any writing that does not relate to the conduct of the public's business and that is contained on a privately owned computer.

**Writing:** 192.410(6) "Writing" means handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings.

**Objective:** To balance the public's right to access documents of Milwaukie public bodies with the expectation that those documents meeting state confidentiality standards will not be disclosed.

**Scope:** This procedure applies to the City Council, advisory boards and commissions, officers or agents, departments, and contractors who are the "functional equivalent" of a public body.

**Policy: The right to inspect public records**

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<sup>1</sup> This would include a record prepared outside of the City of Milwaukie that contained information being used to conduct the public's business with records "owned, used or retained" by the public body. Not included would be a document prepared by a private entity that is simply reviewed, but not retained, by the City.

According to ORS 192.420, “every person” in Oregon has the right to inspect any nonexempt public record. The following is an excerpt from the Attorney General’s *Public Records and Meetings Manual*, 2005:

“Generally, the identity, motive, and need of the person requesting access to public records are irrelevant. Interested persons, news media representatives, business people seeking access for personal gain, busy bodies on fishing expeditions, persons seeking to embarrass government agencies, and scientific researchers all stand on equal footing.”

“However, the identity and motive of the person seeking disclosure of a particular public record may be relevant in determining whether a record is exempt from disclosure under a conditional exemption. ORS 192.501 conditionally exempt certain records from disclosure ‘unless the public interest requires disclosure in the particular instance.’ As the discussion of exemptions below demonstrates, many of the exemptions listed in ORS 192.502 call for a balancing of privacy rights, governmental interests, and other confidentiality policies, on the one hand, and the public interest in disclosure of the other. In cases requiring a balancing of interests, the identity of the requestor and the use to be made of the record may be relevant in determining the weight of the public interest in disclosure.”

### **Those subject to the public records law**

Any public body in the state of Oregon is subject. In Milwaukie this includes the City Council, boards and commissions, officers or agents, and departments. This also applies to a contractor that is the “functional equivalent” of a public body. In addition, privatization has its own impact.

“Even if a private entity is not the functional equivalent of a public body, if it contracts with a public body, its records may be obtained under the Public Records Law from the public body has custody of copies of the records.”

The City is not required, however, to create a public record to disclose the reasoning behind an action or knowledge the staff might have. The Attorney General’s Office has also concluded that:

“although the data in computer programs and printouts generated for use by the public body are public records, a public body is not obligated to perform specific computer runs or manipulate the data in the computer in a manner requested by the public.”

E-mail is also a public record. Although a user may delete his/her individual e-mails, the e-mail may continue to exist on a back- up tape or in another users mailbox and is a public record. A public body must make all nonexempt e-mail available for inspection and copying regardless of its storage location.

Regarding electronic records or data files, The Attorney General’s Public Records and Meetings Manual states that:

“Data in computer programs and printouts that is generated for use by a public body are public records. But, a public body is not obligated to perform specific computer runs or manipulate the data in the computer to satisfy a request by the public.”

The manual goes on to say:

“Since we first addressed this issue, we have observed public bodies at every level of government move toward computerization and electronic storage of information. The public’s access to this information is increasingly dependent upon its retrieval by public

bodies through the use of computer software or programs developed or acquired by the public bodies at public expense. We believe that the Public Records Law imposes a duty on public bodies to retrieve and make available nonexempt computer or electronically stored data or information, when requested, through the computer software or programs in use by the public body.”

This does not mean the City must create public records to respond to a public records request.

**Making a records inspection request:** Requests must be made under the Oregon Public Records Law. Although the City needs to respond when a person makes a request under the federal Freedom of Information Act, Oregon public bodies are not bound by the timeframes or other requirements of that federal act.

The City recognizes and respects the public’s right to public documents and the importance of maintaining orderly files to facilitate public access in an efficient and cost-effective manner. The City shall provide proper and reasonable opportunities for inspection and examination of the records during usual business hours if such request does not interfere with the regular discharge of duties. The City shall respond to a person who makes a written request for a public record as soon as practicable and without unreasonable delay.

All requests need to be in writing when practicable with the date, name, address, and signature of the person making the request or sufficient e-mail address. The request must contain, if known, a statement of sufficient specificity to determine the nature, content, and probable department in which the record is located.

If the public record is maintained in a machine readable or electronic form, the City shall provide a copy of the public record in the form requested, if available. The City will provide an opportunity for individuals with disabilities to request an alternative form.

A person making a public record request may personally inspect the requested document during normal business hours in the presence of a City staff member. Original public documents may not be taken out of the City’s custody. The City shall not create any new documents or customize any existing documents in response to a records request.

If a document contains exempt information, a copy will be provided with the exempt portion redacted. The cost of having legal assistance to redact material can be included in the fee charged.

The City will establish a fee that is reasonably calculated to reimburse the City for the actual cost of making public records available. Hourly rates for employee services are billed at the actual cost per hour for that employee. A listing of these fees is available on the city website at under miscellaneous and billable hourly rates.

<http://www.ci.milwaukie.or.us/milwaukie/fees/comfees08.pdf>

A request that is extraordinary and would significantly disrupt the regular discharge of duties will be charged whether copies are provided or not. The City may not establish a fee greater than \$25 unless the requestor is provided with written notification of the estimated amount and the requestor confirms that he/she wants the City to proceed. Prepayment shall be required if the amount of the request is greater than \$25.

Copies of public records may be furnished without cost or at a substantial reduction if the City Records Officer determines the waiver is in the public interest. The Officer will review the waiver or reduction request while also considering the requestor's ability to pay and any financial hardship on the City that might arise from granting the waiver.

Copies of routine materials personal to a requestor will be furnished without charge except for police reports.

Copies of routine materials requested by any Milwaukie elected official, appointed advisory board, or representative of a recognized neighborhood association will be furnished without charge if the request relates to information needed to act in one's official capacity.

A person who believes there has been an unreasonable denial of a fee waiver or fee reduction may petition the district attorney.